

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) MB Docket No. 14-82 |
| |) |
| PATRICK SULLIVAN |) FRN 0003749041, 0006119796, |
| (Assignor) |) 0006149843, 0017196064 |
| |) |
| and |) Facility ID No. 146162 |
| |) |
| LAKE BROADCASTING, INC. |) File No BALFT-20120523ABY |
| (Assignee) |) |
| |) |
| Application for Consent to Assignment of |) |
| License of FM Translator Statin W238CE, |) |
| Montgomery, Alabama |) |

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

**LAKE BROADCASTING, INC.'S MOTION IN
LIMINE TO DISQUALIFY TAMARA
GREMMINGER AS AN EXPERT WITNESS AND
REJECT HER DIRECT CASE TESTIMONY**

Lake Broadcasting, Inc. ("Lake"), by its attorney, pursuant to the Federal Rules of Evidence ("FRE") 702 and 703 and Section 1.354 of the Commission's Rules, hereby moves for an order limiting the Enforcement Bureau's evidence in this proceeding to disqualify Tamara Gremminger as an expert witness and to exclude her direct case testimony (EB Exhs. 1 and 2). In support whereof, the following is shown.

1. The Enforcement Bureau has notified the Presiding Judge that it intends to use Ms. Tamara Gremminger as an expert witness in this proceeding, and it has supplied two documents to support her appearance: EB Exhibit 2 (Testimony of

Tammy Gremminger, dated March 27, 2017) and EB Exhibit 3 (Statement of Tammy Gremminger dated November 16, 2015). As EB Exhs. 2 and 3 demonstrate, Mr. Gremminger does not meet the expert requirements of Rule 702 of FRE because, as Lake will show, she is not “qualified as an expert by knowledge, skill, experience, training, or education,” her “specialized knowledge” will not help the Presiding Judge to understand the evidence or to determine a fact in issue, and her testimony is not “based on sufficient facts or data” of her own. And, under Rule 703 of FRE, Ms. Gremminger may not base her opinions on facts or data that are inadmissible hearsay; hence, her conclusions in Exhs. 2 and 3 are useless, since they are not based on proven facts in this case or Ms. Gremminger’s examination or testing of Mr. Michael Rice, but rather almost entirely upon unproven hearsay contained in Missouri Department of Corrections records.

2. Apart from fatal FRE defects, an additional disqualifying cloud is Ms. Gremminger’s loss of credibility because of her involvement earlier this year in “fake news” concerning an alleged effort by Mr. Rice or someone associated with him to threaten her about negative consequences if she continued to participate in this proceeding.

**Gremminger’s Lack of Expert Credentials
In Risk Assessment Under FRE 702**

3. In EB Exh. 3, Para. 1, Ms. Gremminger describes herself as a Parole Officer in the Missouri Department of Corrections “for more than 30 years during which I have gained substantial expertise in the management of sex offenders as they reenter the community.” She is a college graduate, but she does not hold any

advance academic degrees or any professional licenses from the State of Missouri.¹ In EB Exh. 2, Para. 1, she calls herself a “Sex Offender Specialist”. However, she does not claim any supervisory position or experience in the Department’s organizational ladder.

4. In EB Exh. 2, Para. 5, Ms. Gremminger tries to show risk assessment expertise by listing 40 one-day courses she has taken since 1997 – a 20-year period. But only two of the courses appear to have anything to do with re-offending risk assessment. Likewise, in EB Exh. 2, Para. 7, Ms. Gremminger asserts that she has testified “as an expert” in approximately 25 cases during the last four years in which she addressed the risk of re-offense, but she does not list the cases, so there is no way to substantiate that claim. Most importantly, although the Bureau asserted in its August 29, 2016 “Report Regarding the Involvement of Tammy Gremminger with Michael Rice During his Parole” (p. 2), that she “did in fact have personal contact with Mr. Rice during the period of his parole and probation” and “met Mr. Rice on home visits, office visits, and in group sessions at the time of his supervision,” Ms. Gremminger testified at her September 14, 2016 deposition (TR. 39) that she saw Mr. Rice only once during this 2½ year period (which occurred 15 years ago) and did not speak to him at that time. Thus, when she states (EB Exh. 2, Para. 8) that her testimony is based on her “recollection of Mr. Rice’s performance” and her review of Department of Corrections hearsay records, the claim of

¹ In EB Exh. 2, Para. 2, Ms. Gremminger states: “After college, I attended and graduated from the St. Charles County Law Enforcement Academy,” but she provides no details. This does not qualify as an advance academic degree and is entitled to no weight.

“recollection” is specious, because she never even spoke to Mr. Rice. What Ms. Gremminger is actually stating is that she bases her entire opinion about Mr. Rice’s potential to re-offend on her review of inadmissible hearsay records. That is not expert analysis of Mr. Rice and is not an acceptable basis for an expert opinion under FRE Rules 702 and 703.

**Gremminger Cannot Base Her Opinions on Inadmissible
Hearsay Evidence Under FRE 703**

5. In Paragraph 27 of the *Hearing Designation Order* in this proceeding, the Commission stated that “the Presiding Administrative Law Judge shall not...relitigate any of the findings of fact and/or conclusions of law contained in any order or opinion relating to the state court proceeding in which Michael S. Rice was determined to be a convicted felon or in any order or opinion relating to the Commission proceeding in which Michael S. Rice and/or the broadcast companies in which he held an interest were previously determined to be unqualified”. Thus, all of the prior facts in this case are deemed to be *res judicata* and are not subject to reexamination. However, the Bureau and Ms. Gremminger attempt to circumvent this ironclad rule by referencing Department of Correction “records” and having Ms. Gremminger claim that (EB Exh. 2, Para. 8) “the files and records I reviewed are kept in the regular course of business at the Missouri Department of Corrections” and are, therefore, covered by the business records exception to the Hearsay Rule. These documents are only admissible as business records of the Department and NOT to prove the truth of the facts asserted therein.

6. Yet, EB Exhs. 2 and 3 contain a number of incorrect and scurrilous

statements about Mr. Rice, derived from the Department's "records," which illustrate the justice and importance of striking them from Ms. Gremminger's testimony and giving no credence to them or to her opinions based on them. Illustrative of this point is that the *HDO* (at para. 3) recites that Mr. Rice's crimes involved "children who were between 14 and 16 years old" and other children "who were under 14 years old," but EB Exh. 2, para. 9 asserts that the children "were aged 9-14 years."

7. In sum, Ms. Gremminger pontificates (EB Exh. 2, para. 17) that "Mr. Rice still poses a substantial risk to the community of re-offense," but she reaches this conclusion without examining or testing him, without speaking to him, without having even seen him in the last 15 years, and relying on scurrilous and erroneous facts contained in her Department's files and records, in contravention of the special *res judicata* rule in this case. Her testimony clearly violates FRE Rule 703 and should be disregarded. *See Paddack v. Christensen*, 745 F.2d 1254, 1262 (9th Cir. 1984); *U.S. v. Lundy*, 809 F.2d 392, 395 (7th Cir. 1987) (a court must insure that an expert witness is testifying as an expert and not merely as a conduit through which hearsay is brought before the jury).

**Gremminger's "Fake News" Accusations Against
Michael Rice Undermine Her Credibility as an Expert Witness**

8. On December 12, 2016, the Bureau filed a scurrilous, unsupported, and diversionary Motion containing a tale of alleged witness intimidation ("someone claiming to represent Mr. Rice had threatened to pursue legal action against Ms. Tammie Gremminger if she continued to participate in the Commission's hearing

process”), which lacked all of the specifics necessary to give the tale any credence and which also diverted attention away from the question of the existence *vel non* of Ms. Gremminger’s alleged credentials. We were not told when the Bureau learned of the alleged intimidation; who told the Bureau about it (a “colleague” is not enough); the identity of the alleged intimidator; when the alleged intimidation occurred; when Ms. Gremminger contacted legal counsel at the Department of Corrections and was instructed to have no further contact with the Bureau until the Department of Corrections completed its investigation; who told her to cease contact with Bureau; who is conducting the investigation at the Department of Corrections; when the investigation began; and when it is expected to conclude.

9. Lake moved to strike the Motion on December 13, 2016, but the Presiding Judge denied that Motion (FCC 16M-37, released December 22, 2016) and ordered Mr. Rice to provide an affidavit or declaration that neither he nor anyone else at his direction, on his behalf, or to his knowledge contacted Ms. Gremminger or the Missouri Department of Corrections in an effort to threaten her continued involvement in this case. That same day (December 22), Mr. Rice filed the requested declaration.

10. Even before the Presiding Judge ruled, the Bureau was already backing away from its tale of witness intimidation. In a December 15, 2016 Letter to the Missouri Department of Corrections, the Bureau’s Acting Deputy Chief Keith Morgan, wrote:

“[W]e would like to be in a position to provide our Administrative Law Judge with confirmation that your legal department is in fact reviewing Ms. Gremminger’s continued participation in the FCC

proceeding....In addition...**we would like to be able to explain the reasons why any such review is being conducted....** (Letter attached to Bureau's December 19, 2016 Opposition to Lake's Motion to Strike (emphasis added)).

11. By email memo dated January 10, 2017, the Bureau informed the parties that counsel for the Department of Corrections had responded to the Bureau's letter, requested that the Bureau "should send Ms. Gremminger a subpoena before contacting her further...[and] did not provide any further details regarding why we have lost contact with her". The Bureau also stated that it had prepared two subpoenas which the Presiding Judge signed and were forwarded to the Department of Corrections.

12. In its February 3, 2017 Status Report, the Bureau summarized (at Paras. 3 and 4) the materials that it received from the Department of Corrections: "a list of the cases in which Ms. Gremminger has testified in the last four years....and a list of the certifications and training she has completed". The Bureau also stated that "Ms. Gremminger also reported that she has been cleared by her office to participate in the FCC hearing as provided for in the Bureau's subpoena".

13. In its February 15, 2017 Supplemental Status Report, para. 4, the Bureau stated that its "additional investigation into this matter has not led to any additional information suggesting Mr. Rice's involvement in this incident. Accordingly, the Bureau sees no reason to divert the parties' and the Presiding Judge's attention away from preparing for hearing to address what is now a non-issue."

14. Not satisfied with this semi-admission by the Bureau that Ms.

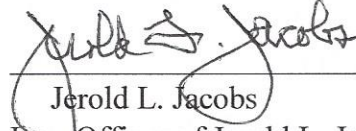
Gremminger had sent the Presiding Judge and Lake on a wild goose chase in December and had impugned Mr. Rice's character in the process, Lake requested a prehearing conference on February 7, 2017 to explore the facts and circumstances surrounding the witness intimidation canard against Mr. Rice.

15. That prehearing conference took place on February 16, 2017, and the Presiding Judge stated at that time (TR 129), "Based on the declaration of your client, okay, I'm not going to hold any of this against him...he starts from the get-go as an honest agent." Lake and Mr. Rice were delighted to be exonerated by the Judge in this fashion, but a dark cloud remains over Ms. Gremminger's credibility for whatever role she played in advancing this mischief. If she testifies at hearing, she will be cross-examined by the Judge and Lake's counsel to try to get to the bottom of this "fake news". In the meantime, Lake urges that she has lost all credibility in this proceeding because of her involvement in this scandalous matter.

WHEREFORE, in view of the foregoing, Lake Broadcasting, Inc. respectfully asks that its Motion be granted, that the Enforcement Bureau's evidence in this proceeding be limited,

and that Ms. Tammy Gremminger be rejected as an expert witness in this proceeding, and her testimony not be admitted into evidence.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jerold L. Jacobs", is written over a horizontal line. The signature is stylized with a large, circular flourish at the end.

Jerold L. Jacobs
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Counsel for Lake Broadcasting, Inc.

Dated: April 21, 2017

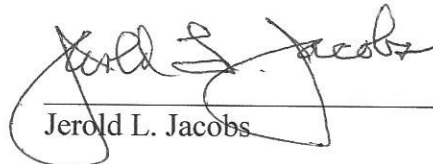
CERTIFICATE OF SERVICE

I, Jerold L. Jacobs, hereby certify that on this 21st day of April, 2017, I filed the foregoing "LAKE BROADCASTING, INC.'S MOTION IN LIMINE TO DISQUALIFY TAMARA GREMMINGER AS AN EXPERT WITNESS AND REJECT HER DIRECT CASE TESTIMONY" in ECFS and caused a copy to be sent via First Class United States Mail and via e-mail to the following:

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